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Attorney Docket No. 1310-006

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**In the United States Patent and Trademark Office  
Before the Honorable Board of Patent Appeals and Interferences**

Appellant Name: Spalink et al. Confirmation No.: 8443  
Application No.: 09/606,683  
Filed: June 30, 2000  
Title of Invention: METHOD AND SYSTEM FOR CLASSIFYING INFORMATION  
AVAILABLE ON A COMPUTER NETWORK  
Examiner: El Chanti, Hussein A.  
TC/A.U. 2157  
Title of Paper: Transmittal Letter  
Docket No.: Attorney Docket No. FOV0002 (1310-006)  
Customer No.: 26108

Express Mail EV 907795194 US  
Mail Stop Appeal Brief -Patents  
Commissioner for Patents  
P O Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL LETTER**

Dear Sir:

Pursuant to the Notification of Non-Compliant Brief dated January 8, 2007, attached is an Amended Brief in the above-identified matter. In that notification it was indicated that the status of the claims was not indicated.

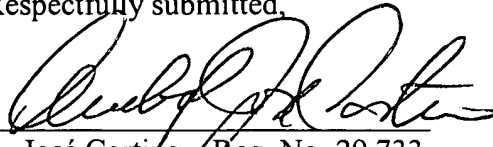
A review of the previously filed brief reveals that there was in fact a status of claims section which identified which claims were currently in the application, which claims were finally rejected, and which claims were being appealed. However, it is also noted that the section did not note which claims were "objected to," which technically speaking, were rejected as they could not be allowed unless rewritten in independent form. Accordingly, the section now identifies which claims have been "objected to" and in addition, an additional sentence has been added which indicates which claims have been "cancelled." Accordingly; the status of all claims

have been accounted for in the section properly entitled, "Status of Claims" set forth in this amended brief.

If any questions remain, please contact the undersigned at the number listed below.

Dated: January 24, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. José Cortina", written over a horizontal line.

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Attorney Docket No. (1310-006)

**CERTIFICATE OF EXPRESS MAILING UNDER 37 CFR 1.10**

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TITLE: METHOD AND SYSTEM FOR CLASSIFYING  
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Mary F. Moore  
Signature

Mary F. Moore



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**AMENDED APPEAL BRIEF**

Dear Sir:

Pursuant to 37 CFR 41.37 and responsive to the Notification of Non-Compliant Appeal Brief dated January 8, 2007, Appellant hereby files this Amended Appeal Brief in the above identified application. The earlier filed Appeal Brief was accompanied by the requisite small entity appeal fee of \$250.00.

It is noted that the Notification of Non-Compliant Brief indicated that the originally filed Appeal Brief did not provide a statement of the status of all claims. A review of that Brief revealed that a section on page 5 was indicated to be "Status of Claims" and that on page 5 it stated that claims 1-3, 8, 11, 15, 17-21 and 23-27 were pending, finally rejected and being appealed. Accordingly the only apparent omission was that cancelled claims were not listed and claims 23-27 were not listed as objected to. This brief corrects that apparent omission.

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(2) REAL PARTY IN INTEREST

The real parties in interest are the inventors and Hitwise Pty. Ltd., the assignee in this application.

(3) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or having any bearing on the Board's decision on the pending appeal.

(4) STATUS OF CLAIMS

Claims 1-3, 7, 8, 11, 15, 17-21 and 23-27 are pending in the application.

Claims 4-6, 9, 10, 12-14, 16 and 22 have been cancelled.

Claims 1-3, 7, 8, 11, 15, and 17-21 have been finally rejected.

Claims 23-27 are objected to.

Claims 1-3, 7, 8, 11, 15, 17-21 and 23-27 are being appealed.



(5) STATUS OF AMENDMENTS

This application was filed with original claims 1-14. The first Office Action issued on July 28, 2003 and Applicant responded by amending claims 1 and 3, canceling claims 4-6, amending claims 7, 8, 11 and canceling 12-14. That amendment was entered.

A Final Rejection was issued on January 28, 2004, rejecting claims 1-3 and 7-11. In an Amendment dated April 28, 2004, claims 1, 2, and 8 were amended, and new claims 15-22 were presented. A Request for Continued Examination was filed.

A new Office Action which was non-final in nature was issued July 23, 2004, rejecting claims 1-3, 7, 8, 11 and 15-22. A response was filed on October 23, 2004, amending claims 1, 8, 17, 18, 20 and 21. New claims 23-27 were presented. A Supplemental Amendment was filed on December 7, 2004, further amending claim 24. The amendments to the claims in the filings of November and December 2004 were entered.

On April 4, 2005, a Final Rejection was issued finally rejecting claims 1-3, 7, 8, 11, 15, 19, 20 and 23-26. Claims 17, 18, 21 and 27 were objected to as being dependent upon a rejected based claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. A response to the Final Office Action was filed on October 4, 2005, with a Request for Continued Examination. Claims 1, 8, 23, and 24 were amended. That Amendment was entered.

On November 30, 2005, the Examiner issued a new Rejection again rejecting claims 1-3, 7, 8, 11, 15, 19, 20 and 23-26, and objecting to claims 17, 18, 21 and 27. An Amendment and Response to that Office Action was filed on May 30, 2006 in which amendments to claims 1, 8, 23 and 24 were entered.

On June 30, 2006, a Final Rejection was issued again rejecting claims 1-3, 7, 8, 11, 15, 19, 20 and 23-26, and objecting to claims 17, 18, 21 and 27 as described previously. On August 30, 2006, an Amendment Under 37 CFR 1.116 was filed proposing amending claims 1, 8, 23 and

24. That Amendment was refused entry and the claims presently before the Honorable Board of Patent Appeals and Interferences are those as presented in the Amendment filed May 30, 2006, which was entered.

(6) SUMMARY OF CLAIMED SUBJECT MATTER

(a) Independent Claim 1

As stated in independent claim 1, the present invention is directed to a method for classifying information available on a computer network. A list of network resource locators are received, with a listing created by identifying network resources accessed by users of the network from data which is related to resources accessed by a number of users of the network (reference is had to the specification of the present application at page 2, lines 20-22, page 5, lines 4-5 and lines 26-29). For each network resource locator of the created list, the network resource locator is sent to a graphical user interface (GUI) component of at least one Web-coding workstation connected to the network, and which is separate from the users of the network (reference is had to the specification at page 2, lines 22-25). A selection is received from at least one Web-coder from the at least one Web-coding workstation. Each selection represents a classification for the resource identified by the sent network resource locator. The selection is generated in response to the Web-coder using tools of the GUI component and in accordance with a predetermined classification system (reference is had to the specification at page 2, lines 23-25, page 5, lines 26-27, and page 6, lines 5-27).

(b) Independent Claim 8

Independent claim 8 provides a system for conducting the previously described method of claim 1 substantially as described with reference to claim 1. Accordingly, reference is had to the specification at the sections referred to with reference to claim 1. In addition, reference is had to Figures 1 and 2, and the corresponding description thereof in the specification.

(c) Independent Claim 23

In addition to the features of claim 1, the method invention of independent claim 23 further requires that the list is sorted based on the number of unique users having access to a resource

identified by the network resource locator (reference is had to the specification at page 3, lines 16-19, and page 5, line 28-30).

(d) Independent Claim 24

The invention of independent claim 24 is a system for classifying information with components substantially according to the method as recited in claim 23. Accordingly, reference is again had to the sections of the specification discussed with reference to claim 23.

(e) Dependent Claims

As further provided in claim 2, the invention includes a method wherein the list of network resource locators include one or more web sites accessed by the users of the network (reference is had to the specification at page 2, lines 26-27 and page 5, lines 1-6). In claim 7, the database is one or more from a group consisting of a flat file, a binary tree, a relational database and an object-oriented database (reference is had to the specification at page 2, line 27-29).

In claim 17, the more than one web-coding workstation comprises a plurality of web-coding workstations. Each one is assigned a predetermined level from lowest to highest wherein the classification is assigned based on receiving a first predetermined number of same selections from web-coding workstations at the lowest level. If the first predetermined number of same selections is not received at the lowest level, the classification is based on receiving a second predetermined number of same selections from web-coding workstations at the next highest level, and if not received at the next highest level, repeating the process upward by level until a level specific predetermined number of selections are received from one of the levels (reference is had to the specification at page 3, lines 1-5, page 8, lines 16-30 and page 9, lines 1-3). Claim 18 is more specific by requiring a multi-level classification system which includes a first level, a second level, and a third level wherein the classification is assigned to a network research locator upon receipt of at least 3 out of 4 first level votes, 2 out 3 second level votes, or one third level vote (reference is had to the specification at the sections referred to with reference to claim 17).

It is noted that the subject matter of claims 17 and 18 has been objected to, but indicated to be allowable if rewritten in independent claim form. Dependent claims 21 and 27 recite the invention in a system form substantially as discussed with reference to the afore-discussed method claims 17 and 18 and reference is had to the specification at the same section as referred to with reference to claim 17 and 18. Claims 21 and 27 have also only been objected to, and the Examiner indicated they would be allowable if rewritten in independent form.

The invention of claim 19 requires that the at least one graphical user interface is one GUI, with the data store connected for storing the classification therein based on more than one same classification received for each resource identified (reference is had to the specification at page 3, line 12-15 and page 8, line 16-21).

The invention of claim 20 requires that the classification processor use a multi-level classification system (reference is had to the specification at page 8, lines 20-21).

The invention of claims 25, 26 and 27 is set forth in the form of a system for conducting the methods previously discussed dependent claims in various alternative forms, and relating to the multiple web-coding stations, the graphical user interface components, and including more than one web-coding station, as well as receiving predetermined numbers of same selections from the web-coding stations at the different levels.

(7) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 7-8, 11, 15, 19-20, 23-26 are anticipated under 35 U.S.C. § 102(e) by U.S. Patent 6,546,393 to Khan ("Khan").

(8) ARGUMENT

The Examiner has advanced a 35 U.S.C. § 102(e) rejection of claim 1-3, 7-8, 11, 15, 19-20 and 23-26 as being unpatentable over U.S. Patent No. 6,546,393 to Khan (hereinafter “Khan”).

(i) In rejecting claims 1, 8, 23 and 24 as unpatentable, the Examiner has stated:

“Khan teaches the invention explicitly as claimed including a system and method for classifying and ranking a list of web pages using a plurality of users on a network.

As to claims 1, 8, 23 and 24, Khan teaches a method and system respectively for classifying information available on a computer network, the method including:

receiving a list of network resource locators, said list being created by identifying network resources accessed by users of the network from use data which is related to resources accessed by a number of the users of the network (see col. 16, lines 1-25 and col. 13, lines 27-55, a list of bookmarks are downloaded to the client device to be categorized by the user, where the list is created based on the number of users that access the web site or the frequency in which the users access the URLs);

for each network resource locator of the created list, sending the network resource locator to a graphical user interface (GUI) component of at least one Web-coding workstation connected to the network which is separate from the users of the network (see col. 1, lines 40- col. 12, lines 5, user selects a category for the web site using a GUI);

receiving a selection from at least one web coder from the at least one Web-coding workstation, with each selection representing a classification for the resource identified by the sent network resource locator, said selection being generated in response to the Web-coder using tools of said GUI component and in accordance with a predetermined classification system (see col. 11, lines 40- col. 12, lines 5, user “web-coder” manually classifies the URLs received from the network where the user is separate from the other users of the network; and

storing the classification in a separate database in relation to said resource locator and to said at least one Web-coding workstation (see col. 12, line 1-27, the classification of the website is stored).”

(ii) Claims 1, 8, 23 and 24

It is respectfully urged that the characterization of Khan by the Examiner is incorrect and an obvious hindsight interpretation of the reference to arrive at Applicant’s invention.

More specifically, col. 16, lines 1-25 of the reference merely discloses the concept of individual users creating their own online bookmark account and doing their own classification as “[a]ll the URLs that users add to their current online bookmark account through the ‘Adding Bookmarks Remotely’ feature may be stored in their online bookmark account and are accessible from any computer on the Internet, just like all the other bookmarks in their online bookmark account.” Once a user is at a selected page, the user may add a bookmark remotely by clicking on the favorite bookmark function in the current browser. In addition, a user may import their current browser bookmarks directly into their online bookmark account.”

It is respectfully urged that this has nothing to do with identifying network resources accessed by common users of a network, and sending it to a Web-coding workstation wherein a selection is made by the Web-coder who is not a user who is browsing a network to classify the resources accessed by users, i.e., multiple users of the network.

In Khan, a user and the supposed Web-coder are one and the same, and function to only code their own resources accessed and to be added as a bookmark. Accordingly, there is limited selection of resources accessed by the user which are added to the selection since all that Khan teaches is an online method of creating and managing an individual user’s favorites at a common online repository where individual user’s can create separate and individual accounts for bookmarks.



The section referred to at col. 13 merely discloses that sites of a category of a web site directory are displayed with a ranking according to the number of users who have the site bookmarked, frequency that the site is visited by users and popularity determined by user voting. This feature has nothing to do with a Web-coder separate from users accessing resources on the Internet to classify resource access on the web.

Further, the section referred to bridging cols. 11 and 12 merely discloses the individual users accessing resources on the net doing their own categorization, with the categorization being edited by an editor selected classification, but only after the user has submitted it with a proposed classification. This clearly has nothing to do with the claimed invention as recited in claims 1, 8, 23 and 24 and clearly does not anticipate Appellant's invention as recited in the independent claims discussed.

In considering whether the rejection under 35 U.S.C. §102 is proper, the subject matter of the barring activity, i.e., the publication (Khan) must be compared with the claimed invention. *Dana Corp. v. American Axel & Mfg., Inc.* 279 F.3d 1372, 1375-76, 61 USPQ2d 1609 (Fed. Cir. 2002). If the subject matter of the barring activity does not contain each element of the claimed invention, and there is no 102(b) bar, the subject matter can still be used to show that the claimed invention does not meet the nonobvious condition of patentability *Allen Eng'g Corp. v. Bartell Indus.*, 299 F.3d 1336, 1352, 63 USPQ2d 1769 (Fed.Cir. 2002). It is clear from the above discussion, that Khan fails to meet the test as a 35 U.S.C. § 102 reference and thus, the 35 U.S.C. § 102 rejection should be reversed.

However, it is acknowledged that the inquiry does not end with an analysis under 35 U.S.C. § 103. It is possible that the Examiner could conclude that the invention presents an obvious variation over the reference under 35 U.S.C. § 103. Accordingly, Appellant provides further analysis herein under the possibility that the reference could render Appellant's invention obvious.

It is well established law that when answering the legal question of whether the claimed invention as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art, the decision maker (the Examiner) must avoid the use of hindsight; *Kahn v. General Motors Corp.*, 135 Fed 3<sup>rd</sup> 1472, 1479, 45 U.S.P.Q. 2nd 1608 (Fed Cir.), cert. denied 525 U.S. 875 (1999). By its nature, hindsight devalues two things; the discovery and the path to the discovery. More specifically, a danger that can arise when modifying or combining prior art is the use of hindsight reconstruction, i.e., allowing the invention under review to act as a template for modifying a piece or prior art or for piecing together teachings contained in separate pieces of prior art; *Yamanouchi Pharm. v. Danbury Pharmacal*, 231 F 3<sup>rd</sup> 1339, 1343–45, 56 U.S. P.Q. 2<sup>nd</sup> 1641 (Fed.Cir.2000). Put simply, it is wrong to use what inventor alone taught against its teacher; *W. L. Gore and Assocs., v. Garlock, Inc.* 721 F 2<sup>nd</sup> 1540, 1553, 220 U.S.P.Q. 303 (Fed. Cir. 1983). There must be clear-and-particular actual evidence of a motivation, teaching, or suggestion to modify or combine prior art *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3<sup>rd</sup> 1313, 1334, 63 U.S.P.Q. 2<sup>nd</sup>. 1374 (Fed Cir. 2002).

Accordingly, it is also respectfully urged that claims 1, 8, 23 and 24 are not obvious from Khan unless an improper hindsight interpretation is engaged because there is nothing in Khan that teaches or suggest a Web-coding function having nothing to do with bookmarking wherein resources accessed by a multitude of users are classified by a Web-coder, for example, for use in merchant analysis. By classifying resources accessed by users of the network, the Web coder is able to provide an analysis of the behavior and preferences of the users of the network based on the network traffic itself. This can be used for subsequent network and site development and was never contemplated by Khan.

Turning now to claim 2, Khan does teach multiple users accessing multiple resources on the Internet and doing their own classification, but this is not done for all of the user accessing the resources where a list of network resource locators are received at a Web-coding workstation for all of the users. At best, changes in classifications are made for specific resources for individual users but there is no overall ranking of public resources accessed by users of a network from what is termed use data or effectively “collected network transaction data”.

As to claims 8 and 11, the bookmarks set forth are identified by a classification. However, this has nothing to do with a hierarchical taxonomy of classifications. As to claim 7, the database is arranged by the Web-coder, and not by inputs from a plurality of individual users to result in a flat file, a binary tree, a relational database, and an object oriented database, which is not taught by Khan.

As to claim 15, Khan does not teach a network resource locator nor does it teach sending the network resource locator to more than one Web-coding workstation because the users in Khan are not Web-coders in the context of Appellant's invention. The same argument applies to claim 19, because the user of Khan cannot be considered to be a multi-level classification system and to so interpret Khan is a hindsight interpretation of the reference to arrive at Appellant's claimed invention when properly interpreted in accordance with the specification. Similarly, the same arguments apply relative to the rejection of claims 20, 25 and 26.

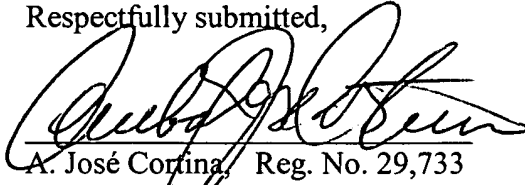
As to claims 17, 18, 21 and 27, it is noted that the Examiner has already indicated that they would be allowable if rewritten in independent form. As such, these claims clearly define patentable subject matter.

In light of the foregoing arguments, Appellants submit that the method and system recited in the finally rejected claims 1-3, 7, 8, 13, 15, 17-21 and 23-27 are not anticipated or rendered obvious by reference supplied by the Examiner.

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the Final Rejection of claims 1-3, 7, 8, 13, 15, 17-21 and 23-27 over the cited art, and hold that Appellants claims be allowable over such art.

Dated: January 24, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. José Cortina', written over a horizontal line.

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## CLAIMS APPENDIX

Claim 1. A method for classifying information available on a computer network, the method including:

receiving a list of network resource locators, said list being created by identifying network resources accessed by users of the network from use data which is related to resources accessed by a number of the users of the network;

for each network resource locator of the created list, sending the network resource locator to a graphical user interface (GUI) component of at least one Web-coding workstation connected to the network, and which is separate from the users of the network;

receiving a selection from at least one Web coder from the at least one Web-coding workstation, with each selection representing a classification for the resource identified by the sent network resource locator, said selection being generated in response to the Web coder using tools of said GUI component and in accordance with a predetermined classification system and

storing the classification in a separate database in relation to said resource locator and to said at least one Web-coding workstation.

Claim 2. The method of claim 1, wherein the list of network resource locators includes one or more Web sites accessed by users of the network.

Claim 3. The method of claim 1, wherein said tools include a hierarchical taxonomy of classifications and said selection represents one of said classifications.

Claim 7. The method of claim 1, wherein the database is one or more from a group consisting of:

- a flat file;
- a binary tree;
- a relational database; and

an object-oriented database.

Claim 8. A system for classifying information available on a computer network, the system including:

- a resource generator component that creates a list of network resource locators from use data which is related to network resources accessed by a number of users of the network;

- a datastore component for storing classification information for a plurality of network resource locators;

- at least one Web-coding workstation connected on the network which is separate from the users of the network, each one of said at least one separate Web-coding workstation having a graphical user interface (GUI) component having tools to allow at least one Web coder to select a classification for each resource respectively identified by the resource locators of said list in accordance with a predetermined classification system and

- a classification processor component separate from said datastore component and from said at least one Web-coding workstation that receives the list of network resource locators from the resource generator component, causes presentation of said network resource locators using said GUI component, and receives the classification determined for each resource respectively identified by the network resource locators, and stores the classification in said data store component.

Claim 11. The system of claim 8, wherein said tools include a hierarchical taxonomy of classifications from which the user selects the determined classification.

Claim 15. The method of claim 1, wherein the network resource locator is sent to more than one Web-coding workstation, and wherein said classification is assigned based on receiving more than one source selection from said more than one Web-coding workstation.

Claim 17. The method of claim 25, wherein the network resource locator is sent to said more than one Web-coding workstation, which comprises a plurality of Web-coding workstations, with each one of the plurality of Web-coding workstations being assigned a predetermined level from lowest to highest, and wherein said classification is assigned based on receiving a first predetermined number of same selections from Web-coding workstations at the lowest level, and

if the first predetermined number of same selections is not received at the lowest level, basing the classification on receiving a second predetermined number of same selections from Web-coding workstations at the next highest level, and if not received at the next highest level, repeating the process upward by level until a level specific predetermined number of selections are received from one of the levels.

Claim 18. The method of claim 17, wherein said classification is a multiple-level voting system including a first level, a second level, and a third level, and wherein a classification is assigned to a network resource locator upon receipt of at least three out of four first level votes, two out of three second level votes, or one third level vote.

Claim 19'. The system of claim 11, wherein said at least one graphical user interface (GUI) comprises at least one GUI, and said data store is connected for storing the classification therein based on more than one same classification received for each resource identified.

Claim 20. The system of claim 8, wherein the classification processor uses a multiple-level voting system.

Claim 21. The system of claim 27, wherein the classification processor uses a multiple-level voting system in which the multiple-level voting system includes a first level, a second level, and a third level, and wherein a classification is assigned to a network resource locator upon receipt of at least three out of four first level votes, two out of three second level votes, or one third level vote.

Claim 23. A method for classifying information available on a computer network, the method including:

receiving a list of network resource locators, said list being created by identifying network resources accessed by users of the network from use data which is related to resources accessed by a number of users of the network;

sorting said list based on the number of unique users having access to a resource identified by the network resource locator

for each network resource locator of the created list, sending the network resource locator to a graphical user interface (GUI) component of at least one of Web-coding workstation connected to the network;

receiving a selection from at least one Web coder from the at least one Web-coding workstation; which is separate from the users of the network, with each selection representing a classification for the resource identified by the sent network resource locator, said selection being generated in response to the at least one Web coder using tools of said GUI and in accordance with a predetermined commerce classification system; and

storing the classification in a separate database in relation to said resource locator and in relation to said resource locator and to said at least one Web-coding workstation.

Claim 24. A system for classifying information available on a computer network, the system including:

a resource generator component that creates a list of network resource locators from use data which is related to network resources accessed by a number of users of the network;

means for sorting said list based on the number of unique users having accessed a resource identified by the network resource locators;

a datastore component for storing classification information for a plurality of network resource locators;

at least one Web-coding workstation connected on the network, and which is separate from the users of the network, each one of said at least one separate Web-coding workstation having a graphical user interface (GUI) component having tools to allow at least one Web coder to select a classification for each resource respectively identified by the resource locators of said list in accordance with a predetermined classification; and

a classification processor component separate from said datastore component and from said at least one Web-coding workstation that receives the list of network resource locators from the resource generator component, causes presentation of said network resource locators using said GUI component, and receives the classification determined for each resource respectively



identified by the network resource locators, and stores the classification in said data store component.

Claim 25. The method of claim 1, wherein said at least one Web-coding workstation comprises more than one Web-coding workstations, and wherein said classification is assigned based on receiving more than one source selection from said more than one Web-coding workstations.

Claim 26. The system of claim 8, wherein said at least one Web-coding workstation comprises more than one Web-coding workstations, and each one of said more than one Web-coding workstations having said graphical user interface (GUI) component having tools to allow more than one user, each corresponding respectively to one of said more than one Web-coding workstations to select a classification for each resource respectively identified by the resource locator of said lists.

Claim 27. The system of claim 26, wherein the more than one Web-coding workstation connected on the network comprises a plurality of Web-coding workstations, with each one of the plurality of Web-coding workstations being assigned a predetermined level from lowest to highest, and wherein said Web-coding workstations are arranged for selecting and assigning a classification for each resource locator based on receiving a first predetermined number of same selections from Web-coding workstations at the lowest level, and if the first predetermined number of same selections is not received at the lowest level, basing the classification on receiving a second predetermined number of same selections from Web-coding workstations at the next highest level, and if not received at the next highest level, repeating the process upward by level until a level specific predetermined number of selections are received from one of the levels.

## **EVIDENCE APPENDIX**

None

**RELATED PROCEEDINGS APPENDIX**

None